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Supreme Court, U.S.
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No. 03-1257

In The

Supreme Court of the United States

Mark Boivin, – Petitioner

v.

Town of Addison – Respondent

ON PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of the State of Vermont

PETITIONER'S REPLY TO THE RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION(S) PRESENTED

1. Whether the Town may use differential assessments for ad valorem taxation of real property, including the reassessment ex post facto of only those properties that have sold and were chosen for inclusion in the State's tax equalization study, in order to acquire an interest in the properties of a particular class.

2. Whether the application of a pre-qualifying test of licensure to determine the credibility of the landowner and the subsequent application of a double standard of review to the evidence based upon this criteria, meet the requirements of due process and equal protection.

LIST OF PARTIES

Additional parties that do not appear in the caption of the case on the cover page are as follows:

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Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Vermont Supreme Court.

JURISDICTION

Federal jurisdiction over tax appeals was invoked by statute:

> "... The appraiser or court **shall** take into account the requirements of law as to valuation, and the provisions of Chapter I, Article 9 of the Constitution of Vermont **and the 14th Amendment to the Constitution of the United States** ...." 32 V.S.A. § 4467 (Emphasis added)

The Petitioner knew the statute and relied upon its plain language. "Shall" makes it mandatory, "and" mean that the requirements of the federal Constitution also apply.

The trial court cited 32 V.S.A. § 4467 in its ruling.

The Jurisdiction of this Court is invoked under 28 U.S.C. §1257(a)

Federal significance:

While on its face this case appears to be fact specific, fundamental constitutional issues of wide national importance are raised and should be settled.

DIFFERENTIAL TAXATION

Taxing jurisdictions across the whole country employ

some variation of a tax incentive e.g. for economic development, conservation, historical preservation, etc. The question here is whether these authorities have the right to not only provide the "carrot" of tax easement but also the "stick" of singling out certain persons or classes for over-assessment. Whether they can punish, through the use of excessive assessments, persons who choose not to participate. Can property owner be compelled to give up part of their property under the guise of taxation.

Both at trial and during appeal the petitioner stated that it is a violation of his rights to be forced to choose between being taxed at the far more than the fair market value of his property or to give up part of his property. Both at trial and in appeal there was intense discussion of the penalties under the current use program.

Justice Dooley acknowledged that farms sell for the current use value and that they are assessed for more. Nevertheless the Vermont Supreme Court turned a blind eye to the constitutional issues.

This is an issue that should be addressed by this Court because of its broad applicability and fundamental relevance to constitutional protections.

SALES CHASING

Statewide and national importance is acquired when only the sales that are chosen for the equalization study are reassessed.

Equalization studies are official governmental documents that are relied upon for many uses.

First they are used as a test of tax assessments to see if

they meet the constitutional requirements of uniformity and equity. They are also used for statewide taxation and for distribution of aid for education. Corrupting these studies adversely affect the rights of people across the whole state. It also impedes public policy development.

INTERSTATE BANKING AND COMMERCE AFFECTED

Nationally, interstate banking and commerce involving the real estate industry are harmed. Banks and financial institutions use the equalization studies to estimate market values and trends, particularly the instant home equity loan industry. Comparisons between tax assessments, as adjusted by the ratio studies, with bank appraisals provide a check upon the practices of appraisers. This check is important for the same reasons that Congress passed the Financial Institution Reform Recovery and Enforcement Act (FIRREA). Corruption of these studies by sales chasing undermines these legitimate functions.

Sales chasing is a widespread problem in jurisdictions across the country. While normally sales chasing affects only the rights of the persons within the taxing jurisdiction, when it corrupts the values on the state's equalization study, there are broad ramifications. Fifteen years ago this Court has ruled that this practice is a violation of the 14th Amendment. Nevertheless the Vermont Courts still turn a blind eye to it. This departure from this Court's decisions calls for the exercise of supervisory power.

The issue of sales chasing in equalization ratios is of national importance that requires the Courts direction.

PRESERVATION FOR APPEAL

UNFORESEEABLE RULING

This claim of violation of due process under the First, Fifth and Fourteenth Amendments by the trial court was raised at the first opportunity available on appeal with the Vermont Supreme Court.

The federal question regarding licensure and the application of a double standard to the evidence arose from the unforeseen act of the trial court. This unforeseen and totally unanticipated act could not be raised earlier. The appeal to the Vermont Supreme Court was the first opportunity to present the issue. The appeal to that court must therefore be considered timely. *Missouri v Gehner,* 281 U.S. 313 (1930), *Herndon v. Georgia,* 295 U.S. 441 (1935)

The federal claim is still in time and preserved for review by this Court even though the Vermont Supreme Court refused to consider it. *Brinkerhoff-Faris Co. v. Hill,* 281 U.S. 673 (1930).

LICENSE AND DOUBLE STANDARD

By education, experience, and by statute, as well as being the owner the petitioner was a competent expert witness

> "Value of property; owner as a competent witness. The owner of real or personal property shall be a competent witness to testify as to the value thereof." 12 V.S.A. § 1604

Heretofore the rule governing evidence was:

> "As the court stated in McKnight Shopping Cen-

ter, Inc. v. Board of Property Assessment, 417 Pa. 234, 241-42, 209 A.2d 389, 393 (1965), "In considering whether or not a particular assessment is lacking in uniformity, however, **a property owner, the taxing authority and the courts may rely on any relevant evidence.**" Philbin v. Town of St. George, 156 Vt. 640; 588 A.2d 1060; 1991, also Bowen v. Town of Burke, 153, Vt. 131,569 A.2d 452, (1989) & Knollwood (supra)." (Emphasis added)

The rule on expert testimony was:

"Generally, an **expert's opinion is of no greater probative value than the soundness of his reasons given therefor will warrant.** State v. Critzer, 230 Md. 286, 186 A.2d 586 (1962); Surkovich v. Doub, 258 Md. 263, 265 A.2d 447(1970)." As quoted in Allen v. Burlington Housing Authority 129 Vt. 8; 270 A.2d 588; (1970). (Emphasis added)

Nevertheless, the trial court parsed the English language and determined that the petitioner was not credible because he was not licensed and did not follow approved appraisal methodology.

Application of a double standard of review followed.

Even though the respondent's appraiser was proved to have violated Uniform Standards of Professional Appraisal Practice (USPAP); even though he used circular reasoning in which the premises of the argument feed upon the conclusion; even thought he violated ethical rules, he was deemed credible. Evidence was accepted from the appraiser on the same basis that other evidence was deemed not credible when presented by the petitioner. This is a double standard. It is

axiomatic that a double standard is not equal protection.

The result of the double standard was that all of the Petitioner evidence was deemed not credible and was not included in the record. Hence the argument that there is Petitioner's argument "...was neither the subject of evidence nor argument before the trial court." Documentary evidence of sales chasing, the property transfer tax returns; over-assessment and the current use value, see Pet. App C pp. 56, 57; and for the inclusion of personal property in the appraisal were all ignored.

CIRCULAR REASONING USED IN THE COURTS DECISION

The double standard led to yet another example of circular reasoning where the conclusion provides the premises supporting the argument.

First the petitioner's evidence was excluded because "Mr. Boivin is a dairy farmer not an appraiser." Then the court and the Town point to the lack accepted factual evidence as justification for the decision to consider him as not credible.

Appeal of the exclusion of his evidence from consideration is denied because of the lack of notation of the evidence in the decision. The error of this logic is proved by the fact that the current use values that were excluded from consideration were actually done by the State of Vermont. (Pet. App C pp. 56, 57)

The change in the standard of review for the evidence was radically different from what had been applied previously, was totally unforeseeable, and could not be anticipated. For this reason the timely appeal at the first opportunity to the Vermont Supreme Court preserved this issue for federal jurisdiction.

SUMMARY

The core of this case is that the petitioner's property is being differentially assessed on a wholly arbitrary and capricious manner at a level far more than it is worth. The right of taxation at the fair market value is predicated upon his forfeiting a fifth of the value of his property. The Vermont courts refuse to address his legitimate claims, rather they themselves violate the constitutional provisions of equal protection and due process. These actions are repugnant to the Constitution and cry out to this Court for redress.

Allowing the differential tax structure manifested here to perpetuate places all property owners at risk. Any authority that wants private property could just tax for it. For example dwellings and businesses could be taxed upon the value of their contents unless the owners give up a right of way for a new road. Appeals would be dismissed because the homeowners are not licensed professional appraisers. An aristocracy of licensed experts deemed infallible and unreproachable will have been created.

We respectively pray that this Honorable Court will defend the rights guaranteed under the Constitution.

CONCLUSION

For the reasons stated above the petition for a writ of certiorari should be granted.

Respectfully submitted,

Mark A. Boivin – pro-se

Date: April 13 2004